



JUDGE DEBORAH THOMAS -FELIX , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it nine individual appeals filed by former staff members<sup>1</sup> (Appellants) of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO or Mission) against the Judgments rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi in their respective cases:

- x Kagizi v. Secretary-General of the United Nations (Judgment No. UNDT/2016/131);
- x Abwe v. Secretary-General of the United Nations (Judgment No. UNDT/2016/126);
- x Basizi v. Secretary-General of the United Nations (Judgment No. UNDT/2016/128);
- x Chentwali v. Secretary-General of the United Nations (Judgment No. UNDT/2016/129);
- x Kabandanyi v. Secretary-General of the United Nations (Judgment No. UNDT/2016/130);
- x Assani v. Secretary-General of the United Nations

Organization as serious and important enough to warrant the attention of a full bench to address the significant questions of law.

4. On 6 June 2017, the Appeals Tribunal issued Order No. 282 (2017) pursuant to which it both consolidated the appeals and referred them for consideration by a full bench of the Appeals Tribunal, pursuant to Article 10(2) of the Statute of the Appeals Tribunal (Statute [ ]).



Administrative Instruction ST/AI/2013/4 (Consultants and individual contractors) were not contravened by their subsequent recruitment under IC contracts; and, (v) no unequal treatment occurred in the implementation of the Mission's restructuring.

8. As noted above, the Appellants filed their respective appeals on 25 November 2016 and 19 December 2016; the Secretary-General filed his corresponding answers on 26 and 27 January 2017; and, the Appeals Tribunal consolidated the appeals and referred them for consideration by a full bench of the Appeals Tribunal by Order No. 282 (2017) issued on 6 June 2017.

### Submissions

#### Appellants' Submissions

9. The UNDT erred in law and in fact and failed to exercise its discretion by concluding that their applications were not receivable. The Appellants challenged the Secretary-General's non-renewal of their fixed-term appointments, not the General Assembly's decision. The UNDT conducted only a perfunctory review of the merits of the Secretary-General's recommendation to the General Assembly that led to the contested decision.

10. In concluding that the Appellants' claims were non-receivable, the UNDT erred in its reliance upon *Ovcharenko et al.*<sup>7</sup> The non-renewal decisions in the Appellants' cases were based upon the Secretary-General's own recommendation to the General Assembly, not on that of a separate entity, as in *Ovcharenko et al.* Most importantly, when the General Assembly approved in June 2015 the Secretary-General's recommendation to abolish the 80 LA posts, it was not apprised of the plan to subsequently retain the staff members encumbering those posts on IC contracts to perform the same functions – a plan that was memorialized in a “note to file” prepared by the Director of Mission Support, MONUSCO in April 2015. No reference was made to this plan in the submissions to the General Assembly (i.e., the Secretary-General's 26 February 2015 report and the Advisory Committee on Administrative Budgetary Questions' 1 May 2015 report).

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<sup>7</sup> *Ovcharenko et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-530.



claiming that the Secretary-General's submissions to the General Assembly were incomplete in so far as there was no mention of MONUSCO's intention to outsource services previously performed by staff encumbering posts that would be abolished, the Appellants effectively seek to obtain a ruling on the General Assembly's decision.

17. The Secretary-General respectfully requests that the Appeals Tribunal dismiss the appeals in their entirety.

#### Considerations

18. The administrative decision, wh

posts.<sup>11</sup> Generally speaking, applications against non-renewal decisions are receivable. However, in the present case, the Appellants have intertwined their challenge of the non-renewal of their appointments with the decision of the General Assembly to abolish their posts.<sup>12</sup>

23. The Appellants specifically contended that the General Assembly lacked information about the IC contracts when it reached its decision to abolish the LA posts. The Appellants have argued that the submission by the Secretary-General to the General Assembly proposing the abolishment of their posts omitted mention of the Administration's intent to rehire LAs on IC contracts in contravention of ST/AI/2013/4. The Appeals Tribunal finds that, in so doing, the Appellants are seeking a review of the General Assembly's decision through the back door. What in effect the Appellants are asking is for the Appeals Tribunal to review and assess the quality of the Secretary-General's submissions presented to the General Assembly. This cannot be done.

24. The fact that the Secretary-General is both the proposer and the implementer is in keeping with the structure of the Organization; in any event, the fact remains that the Secretary-General's proposal is an act prefatory to the General Assembly's decision and to the administrative decision at issue.<sup>13</sup>

25. We note, further, that, in accordance with the above mentioned principles, the UNDT only denied receivability of the Appellants' application against their non-renewal in so far as it was deemed to be a direct challenge against the General Assembly's decision to abolish 80 LA posts. In other aspects, the UNDT regarded the application as receivable and dealt with the merits of the case in stating that: (i) following *Ovcharenko et al.* an administrative decision taken as a result of the General Assembly is lawful and the Secretary-General cannot be held accountable for executing such a decision; (ii) the provisions of Section 3.7(b) of ST/AI/2013/4 were not contravened by the hiring of the Appellants under IC contracts; and, (iii) no unequal treatment occurred in the implementation of the Mission's restructuring which led to the abolition of 80 LA posts in Bukavu and Kinshasa. These findings were not substantially challenged on appeal.

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<sup>11</sup> Impugned Judgments, para. 20.

<sup>12</sup> *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481.

<sup>13</sup> *Ibid.*



26.

Judgment

28. The appeals are dismissed and Judgment Nos. UNDT/2016/131, UNDT/2016/126, UNDT/2016/128, UNDT/2016/129, UNDT/2016/130, UNDT/2016/127, UNDT/2016/155, UNDT/2016/156 and UNDT/2016/189 are hereby affirmed.

Original and Authoritative Version: English

Dated this 14<sup>th</sup> day of July 2017 in Vienna, Austria.

(Signed)

Judge Thomas-Felix,  
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Chapman

(Signed)

Judge Murphy

(Signed)

Judge Raikos

(Signed)

Judge Knierim

(Signed)

Judge Halfeld

Entered in the Register on this 5<sup>th</sup> day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar